88-1608

No.

Supreme Court, U.S.
FILED
MAR 31 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF
THE UNITED STATES OF AMERICA
October Term, 1988

Cedar Crest #10, Inc.,
Petitioner,

vs

The City of Dallas,
Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of the
United States from the
Supreme Court of Texas

PETITION FOR WRIT OF CERTIORARI

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4144 N.Central Expy.
Dallas, Texas 75204
(214)824-2300
Attorney for Petitioner

QUESTIONS PRESENTED

1. Did the Supreme Court of Texas err in finding that Chapter 27 of the Dallas City Code was constitutional in that it fails to provide for a judicial determination of public nuisance prior to demolition of a building?

2. Did the Supreme Court of Texas err in finding that Chapter 27 of the Dallas City Code was constitutional in that it limits review on appeal of the ruling of the Urban Rehabilitation Standards Board to appeal under the substantial evidence rule?

DESIGNATION OF CORPORATE RELATIONSHIPS

This is the original Designation of Corporate Relationships.

Cedar Crest #10, Inc. is not owned by any parent corporation.

Cedar Crest #10, Inc. does not have any ownership interest in any subsidiary.

Cedar Crest #10, Inc. does not have any affiliates.

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No.

In The
SUPREME COURT OF
THE UNITED STATES OF AMERICA
October Term, 1988

Cedar Crest #10, Inc.,
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vs

The City of Dallas,
Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of the
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Supreme Court of Texas

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Supreme Court of Texas, entered November 16, 1988; Motion for

Rehearing - overruled January 4, 1989; and the opinion of the Court of Appeals for the Eleventh Supreme Judicial District of Texas, at Eastland, Texas, entered June 16, 1988, are set out in the Appendix hereto. The decision of the Texas Supreme Court is reported as Cedar Crest Heights No. 10, Inc. vs. The City of Dallas, 754 S.W.2d 351 (Tex.App.--Eastland 1988, writ denied).

JURISDICTION

This appeal of the ruling of the Urban Rehabilitation Standards Board of Dallas, Texas draws in question the constitutionality of Chapter 27 of the Dallas City Code on the grounds that it provides a means whereby the City can designate a building to be a public nuisance and order its demolition, thereby taking the property without compensation, without first having a court of competent

jurisdiction determine whether the structure is, in fact, a nuisance in violation of the due process clause of the Fourteenth Amendment to the United States Constitution and Art. I, Sec. 19 of the Texas Constitution.

The jurisdiction of the U. S. Supreme Court to review this decision of the Supreme Court of Texas is conferred by 28 U.S.C. §1257 (2) and (3).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitutional Provisions

U. S. Const. Amend. V. No person shall be . . . deprived of life, liberty or property without due process of law . . . nor shall private property be taken for public use, without just compensation.

U. S. Const. Amend. XIV. No State shall make or enforce any law which shall abridge the

privileges and immunities of citizens of the United States; nor shall an State deprive any person of life, liberty or property, without due process of law . . .

Texas Const. Art. I, Sec. 19. No citizen of this State shall be deprived of . . . property . . . except by due course of the law of the land.

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STATEMENT OF THE CASE

1. Facts material to questions presented. Petitioner is the owner of a 26-unit apartment building in Dallas, Texas, which complied with all current building, fire, health and safety requirements of the City of Dallas when

constructed in 1968.(Opinion of 11th Court of Appeals - App.B-2). Since then the neighborhood has undergone an all too familiar pattern of urban decline. Many buildings in the area have been abandoned or vacated, vandalism and arson are common and correspondingly, property values have declined dramatically.

2. Procedure below. On May 5, 1981, an inspector from the Urban Rehabilitation Standards Board ("Board") issued a Notice of Violation classifying the structure as a health and safety hazard as defined by Chapter 27 of the Dallas City Code, then in effect (January, 1980), and required immediate repairs. A hearing was held before the Board on October 6, 1981, at which the structure was found to be in violation of the minimum standards set forth in Sec. 27-11, that the structure constituted an urban nuisance, and ordered the building repaired or demolished.

(Tr.10). Petitioner filed for an administrative review of this decision under Sec. 27-14 which resulted in a minor revision of the original order regarding time allowed for repairs to be effected. On December 4, 1981, the Board issued its final order requiring repair within 90 days and demolition of the building if the repairs were not effected. (Tr.11). The order made no allowance for preservation of the structure in its present condition. (Tr.10).

Petitioner timely appealed the Board's decision as required by Sec. 27-9(e) to the District Court of Dallas County, Texas. The constitutional questions were raised by petitioner in its Motion for Summary Judgment (Tr.19), which was subsequently denied. After trial, the Court held for the City ruling that both the initial decision making process before the Board and review on appeal under

the substantial evidence rule were both constitutional. Petitioner timely filed a Motion for New Trial which was denied.

Petitioner perfected its appeal to the Court of Appeals for the Eleventh Supreme Judicial District of Texas, filing its brief therewith on July 30, 1987, wherein petitioner asserted that Chapter 27 was unconstitutional through its fourth point of error. The Court of Appeals rendered its judgment and opinion affirming the ruling of the trial court finding that Chapter 27 was not unconstitutional. Petitioner filed a Motion for Rehearing and after review, the Court of Appeals withdrew its opinion and judgment of May 19, 1988, substituting therefor an opinion and judgment dated June 16, 1988, which did not alter the outcome of the case. (App.A-1).

Thereafter, petitioner timely filed Application for Writ of Error to the Supreme

Court of Texas, where petitioner preserved the issue of constitutionality of Chapter 27. The Texas Supreme Court denied the Writ of Error, affirming the judgment of the Court of Appeals and the District Court. (App.A-8). Petitioner's Motion for Rehearing was denied on January 4, 1989. (App.A-6). In denying the writ of error, the Texas Supreme Court adopted the June 16, 1988 opinion issued by the Court of Appeals.

Petitioner has through the use of injunction and supercedeas bond preserved the present condition of the building to this date so that a determination of the rights of the parties may be determined while the structure is still standing. (App.A-4).

REASONS FOR ALLOWANCE OF WRIT

1. Introduction. Petitioner maintains that Chapter 27 is an unconstitutional attempt

by the City of Dallas to avoid the legal necessity of judicially determining the existence of an urban nuisance prior to demolition, as an expedited way to take property without the use of eminent domain, thus avoiding the cost of acquiring land for the City. In all courts below, petitioner has maintained that Chapter 27 unconstitutionally deprives it of property without due process because its procedures do not provide for a de novo judicial determination of public nuisance prior to demolition.

Since petitioner first began the appeal process herein the Dallas city council has amended Chapter 27 on several occasions. Compare DALLAS, TEX. REV. CITY CODE (1960) - Ch. 27 (as amended January, 1980)(App.C-1 et seq.), with DALLAS, TEX. REV. CITY CODE (1960) - Ch. 27 (as amended July, 1988)(App.C-37 et seq.). Since the January, 1980 version of

Chapter 27 was in force on the date of the issuance of the original citation herein and upon the appeal to the district court below, the references in this Petition to Chapter 27 are to that version. The pertinent portions of the subsequent amendments of Chapter 27 incorporated in the July, 1988 version presently in force are set forth in their entirety in Appendix C. In brief the more recent amendments of Chapter 27 have authorized the board to assess criminal (27-4(b)) and civil (27-4(d)) fines at ten times their 1980 levels for noncompliance, as well as recover the cost of attorneys fees incurred in civil enforcement actions (27-13(f)), including the foreclosure of liens. The rehearing filing fee was also increased from $40 to $540 (27-14(c)). Most of the changes which have been incorporated into Chapter 27 since 1980 have made it

more difficult and/or expensive to resist findings of the board.

This Court has used a two stage analysis to determine whether a due process problem exists. First, is the property interest encompassed within the Fourteenth Amendment's protection of "property", and secondly, if a protected interest is found, what procedures constitute "due process of law". Ingraham v. Wright, 430 U.S. 651 (1977). There is no question that the apartment building herein constitutes "property" as that term has been defined in a long history of case law, nor is there any question that the Board is a governmental entity which seeks to take such action. Since the express result of the order entered by the Board, and ultimately appealed to this Court, is the demolition of the building owned by petitioner, it would seem a priori that the first test has been met.

2. Requirements of "due process". Due process has been a difficult legal concept to define, due to the importance of the circumstances of the subject being considered and the necessities of the specific situtation. Moyer v. Peabody, 212 U.S. 78 (1909). However the guaranty of due process as set forth in the Fourteenth Amendment has been described as the very "essence of ordered justice", Brock v. North Carolina, 344 U.S. 424 (1953), and a guaranty which is absolute rather than relative. Hammond Packing Co. v. Arkansas, 212 U.S. 322 (1909). A commonly used definition of due process has been the application of law through courts of justice, Brown v. New Jersey, 175 U.S. 172 (1899), but a more universal definition would be any legal proceeding sanctioned by age and custom, or newly devised at the discretion of the legislature

for the furtherance of the public good, which regards and preserves the fundamental rights of property and justice. People v. Hickman, 204 Cal. 470, 268 P. 909 (1928).

A basic principal underlying due process is the idea of "fundamental fairness". Kinsella v. United States, 361 U.S. 234 (1960). In addressing the intent of the due process clause this Court has described it as:

> . . . designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy which may characterize praiseworthy government officials . . . Cleveland Board of Education v. LaFleur, 414 U.S. 632, 647 (1974).

Chapter 27 appears to lack this fundamental fairness in that it fails to take into consideration the economic feasibility of the repairs required. Despite having knowledge of the rampant arson in the area where the subject property is located, the board would not allow petitioner the option of preserving

the property in its present condition until social and economic conditions would justify the expenditure of funds to bring the structure into Code compliance.

3. Judicial determination of nuisance.

This Court has stated the minimum requirements for due process to be notice and opportunity for hearing before a fair and impartial tribunal. Withrow v. Larkin, 421 U.S. 35 (1975). Herein notice is not at issue, and argument will focus on the hearing aspect.

Usually due process requires a formal judicial proceeding, Staten Island Edison Corp. v. Maltbie, 73 N.E.2d 705 (Ct. App. N.Y. 1947), however where adequate safeguards exist this Court has allowed the tribunal requirement to be met by use of an administrative hearing board or panel. Barsky v. Board of Regents, 347 U.S. 442 (1954). The combination

of investigative and adjudicatory functions in the same administrative agency does not, of itself, violate due process. But, the special facts and circumstances of such a case can indicate that the risk of unfairness is unreasonably high. Larkin, 421 U.S. at 47.

The primary case relied upon by the Texas Court of Appeals below, Traylor v. City of Amarillo, 492 F.2d 1156 (5th Cir. 1974), appears to resolve the issues raised by petitioner herein, but in fact failed to address the circumstances herein. Although appearing to hold that a judicial determination of nuisance is not necessary prior to demolition, the dicta of that case strongly reinforces the argument of petitioner herein and is consistent with the holdings of this Court:

> Where the control is reasonable and the actions otherwise accord procedural fairness, we do not believe that the United States Constitution requires a judicial determination precede

demolition of property found to be a nuisance. Id. at 1159. (Emphasis added).

Herein the form of due process has been scrupulously maintained by the City. Upon first reading Chapter 27 appears to grant all of the safeguards required by this Court for due process. However, in practice its application clothes an impermissible intrusion into constitutionally protected property rights in the guise of proper police power regulation. On its face Chapter 27 gives opportunity for hearing, but in actuality the hearing is a rubber stamp proceeding since Chapter 27 defines urban nuisance as merely being multiple violations of the Sec. 27-11 laundry list, to wit:

> URBAN NUISANCE refers to a premises or structure that:
>
> . . . .
>
> (B) because of violations of Section 27-11, its state of disrepair is so unreasonable that it causes injury, damage, harm, or inconvenience to a considerable portion of the community in the use and enjoyment of property, material-

> ly interfering with the proper use or comfort and enjoyment of surrounding property . . . DALLAS, TEX. REV.CITY CODE (1960) - Ch. 27-3(18)(B)(as amended January, 1980).

The judicial review pursuant to Sec. 27-9(e) does not permit a full review of the facts but merely reviews the "record" from the board under the substantial evidence rule. Thus, petitioner's opportunity to review the board decision in a court of law is limited to only that evidence presented to the board. Petitioner is deprived of an opportunity for de novo consideration of whether its building constitutes a public nuisance made by a court of law. Instead, the appeal to the district court merely decides if the procedures prescribed by Chapter 27 have been followed. If the ordinance is constitutionally flawed, then its review by the district court is tainted.

In determining whether the requirements of due process have been followed, this Court

has stated that substance will take precedence over form, such that the apparent form of a proceeding cannot convert an impermissible process into due process of law, if the necessary result of the process is to deprive a person of property without compensation. Washington ex rel. Oregon R. & N. Co. v. Fairchild, 224 U.S. 510 (1912). In resolving claims concerning due process under the 14th Amendment, this Court has looked to the Bill of Rights for guidance. Duncan v. Louisiana, 391 U.S. 145 (1968). Where a fundamental right is affected, the test has been whether a "compelling state interest" is advanced by the ordinance and whether the ordinance is the least restrictive method available to effectuate that interest. Twining v. New Jersey, 211 U.S. 78 (1908). Herein there is a compelling state interest in rehabilitating depressed urban areas. Chapter 27 is an

attempt to effectuate that interest, but is it the least restrictive method? Certainly, the City could use its power of eminent domain and purchase the property outright. Indeed, the Constitution seems to require that course despite increasing encroachment by police power statutes.

This Court has stated that consideration of what procedures constitute due process must begin with a determination of the precise nature of the government function and the private interest affected by such action in any specific case. Fusari v. Steinberg, 419 U.S. 379 (1975). Herein the precise nature of the government function is stated in Chapter 27-1:

> The establishment and maintenance of minimum structural and environmental standards are essential to the prevention of blight and decay and the safeguarding of public health, safety, morals, and welfare.

And the precise nature of the private interest is in being compensated for the taking of pri-

vate property by the state for a public purpose. To resolve conflicts of this sort, this Court has used a balancing test taking three distinct factors into consideration: 1) the private interest that will be affected, 2) risk of erroneous deprivation of that private interest through the procedures used, and 3) the government interest. Mathews v. Eldridge, 424 U.S. 319 (1976). In applying this test herein, the extent to which the police power is allowed to infringe upon the constitutional property rights of the owner must be determined.

4. Police power vs. property rights. It is clear that the state may take private property without compensation in an emergency in order to protect the health or safety of the general public. Spann v. City of Dallas, 111 Tex. 350, 235 S.W. 513 (1921). The destruction

of one building to prevent the spread of fire to others is a familiar example. Chapter 27 in that regard is a classic police power regulation of private property. However the police power, regardless of its intent or wording, is subordinate to the Constitution and is accordingly limited thereby. Spann, 21 S.W. at 515. The general rule has been stated that the owner has the constitutional right to make any use of his property so long as it does not endanger or threaten the safety, health, comfort or general welfare of the public. Id. at 516. But any law abridging rights to a use of property beyond what is necessary for public welfare and general security is not a valid exercise of police power. Id at 515. The crucial question herein becomes: Do the standards prescribed by Chapter 27-11 protect the public welfare, or are they a legislative attempt to enforce a specific aesthetic standard?

It is not clear if the state can use the police power to take property which is deemed to be a public nuisance merely because it is unsightly. Herein the facts show that petitioner's building posed no threat to the physical safety or health of the general public, being unoccupied and boarded up on the date of the initial citation. (Opinion of 11th Court of Appeals - App.B-2). This is crucial because it shows the true use of Chapter 27 in this case is to regulate aesthetics.

This Court has held that the legislature has the power to take private property based upon aesthetic considerations for the public welfare.

> The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy . . . Berman v. Parker, 348 U.S. 26, 33 (1954).

The Court went on to state that nothing in the due process clause bars exercise of the police power on the basis of aesthetic considerations. However, this Court was speaking only as to "taking" of private property through the proper use of eminent domain, not police power regulation which effects a taking without compensation.

Municipal regulations interfering with private property rights which are founded on purely aesthetic grounds have almost universally been held invalid. Spann, 235 S.W. at 517. It should be noted that this Court has stated that aesthetic considerations may be taken into account where other elements are present to justify regulation under the police power. Welch v. Swasey, 214 U.S. 91 (1909). But the facts of this case do not support such an application of Chapter 27. Herein Chapter 27 appears to be a less costly alternative to

eminent domain. Under Chapter 27, after a demolition order issues, the owner has the option of demolishing his own structure or having the City do it for him (27-13(c)(4)), and then charge him its cost. Should the owner be unable or unwilling to pay the cost of demolition, the City will attach a lien to the real property for the demolition cost, and if it remains unpaid, ultimately foreclose the lien (27-13(d)), thereby taking not only the structure through demolition, but the underlying realty as well.

The question before this Court is: At what point does administrative efficiency take precedence over the constitutional right of the property owner to have a judicial determination of whether or not his property constitutes a nuisance and may therefore be abated without compensation? Unfortunately

that question was not addressed by Traylor or the Texas courts below.

The provisions of Chapter 27 at issue herein have been criticized recently by at least one Texas court. In Hart v. City of Dallas, 565 S.W.2d 373 (Tex.Civ.App.-- Tyler 1978, no writ), the Tyler Court of Civil Appeals held that a court of competent jurisdiction must first determine whether a structure constitutes a nuisance before it may be demolished. It is significant that the court strongly criticized Chapter 27 four years after the Traylor case stating: "We point out here that the question of the validity of the ordinance is not before us. . ." Id. at 379. In reaching its decision the Tyler court relied upon the opinion of the Texas Supreme Court in Crossman v. City of Galveston, 112 Tex. 303, 247 S.W. 810 (1923), where that Court held that a municipality is not

empowered to determine whether a structure constitutes a nuisance in fact, stating:

> If in fact this property is a nuisance, the decree of a court of competent jurisdiction must first adjudge it to be so before the property may be lawfully destroyed. Id. at 813.

The Supreme Court of Texas reinforced the position taken in Crossman in City of Houston v. Lurie, 148 Tex. 391, 224 S.W.2d 871 (1949), where it stated that the question of whether a structure constitutes a nuisance is a judicial one and not subject to the limitations of the substantial evidence rule. The court rejected the city's argument that the scope of judicial review could be restricted under the broad police powers conferred in the City's charter. However, the Lurie court did not address the more specfic situation herein where an ordinance prescribes the use of the substantial evidence rule. See also City of

Houston v. Schlueter, 340 S.W.2d 539, 540 (Tex.Civ.App.-- Houston, 1960, no writ).

The Court of Appeals below held against petitioner without mention of Hart despite its more recent examination of the very ordinance at issue herein. While the court below was able to dispose of the contrary holdings in Crossman and Lurie by distinguishing them from the present case based upon the existence of Sec. 27-9(e), the Hart court, at least, found Chapter 27 in its entirety to be troubling. After reading these cases it would seem that the ruling of the Texas Supreme Court in the case herein is at odds with its prior interpretation of the substantial evidence rule.

This Court addressed closely related issues very recently in First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. --, 107 S.Ct. 2378 (1987). In what appears to be a preceden-

tial decision this Court ruled on a flood control/land use ordinance which prevented plaintiff from rebuilding its camp facilities in what had been designated as floodplain by County ordinance. This Court found that the regulation of the prior use effected a "taking" of all land use without compensating plaintiff therefor and held that such taking violated plaintiff's rights under the due process clause. The parallel between the taking effectuated by the land use ordinance in Glendale and the taking for public benefit by Chapter 27 herein should have the same result where a complete taking of property is involved.

CONCLUSION

WHEREFORE, petitioner prays that a Writ of Certiorari issue from this Honorable Court to review the constitutionality of Chapter 27

of the Dallas City Code. In the event that the Petition is granted, petitioner prays that Chapter 27 of the Dallas City Code be found unconstitutional.

Respectfully submitted,

Michael E. Smoller

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4144 North Central Expy.
Dallas, Texas 75204

Attorney for Petitioner

March 27, 1989

APPENDIX A

Copies of Decisions
and Opinions Entered Below

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1. Judgment - June 16, 1988
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Eastland, Texas. A-1

2. Order Withdrawing Prior
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3. Stay of Mandate - February 2, 1989
11th Court of Appeals
Eastland, Texas A-4

4. Order Overruling Petitioner's
Motion for Rehearing - January 4, 1989
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5. Order Denying Writ of Error -
November 16, 1988
Supreme Court of Texas A-8

JUDGMENT

11th Court of Appeals

Eastland, Texas

Cedar Crest #10, Inc., * June 16, 1988

Vs. No. 11-87-112-CV *

The City of Dallas, * Our former opinion and judgment dated May 19, 1988, entered in Volume 11, page 81, of the Minutes of this Court are withdrawn and held for naught and the opinion and judgment dated June 16, 1988, are substituted therefor.

Cedar Crest #10, Inc., * From the 162nd District Court of Dallas County

Vs. No. 11-87-112-CV * June 16, 1988

The City of Dallas, * Opinion by Arnot, J.

This cause came on to be heard on the record and the same being inspected, it is the opinion of the Court that there was no error in the judgment. It is therefore ordered, adjudged and decreed that the judgment of the

trial court be, and the same is hereby, in all things affirmed, in accordance with this Court's opinion. It is further ordered that the costs incurred by reason of this appeal be, and the same are hereby, taxed against appellant, Cedar Crest #10, Inc., principal, and Mary Lou Bailey and James Skip Bailey, sureties on its appeal bond, for which let execution issue, and that this decision be certified below for observance.

11th Court of Appeals

Eastland, Texas

Order

Cedar Crest #10, Inc.

Appellant

Vs. No. 11-87-112-CV -- Appeal from Dallas County

City of Dallas

Appellee

Our former opinion and judgment dated May 19, 1988, are withdrawn, and our opinion and judgment dated June 16, 1988, are substituted therefor.

/s/ W. G. Arnot
W. G. Arnot

JUSTICE

June 16, 1988

Do not publish. See TEX.R.APP.P. 90.

Court of Appeals

Eleventh District of Texas

100 West Main Street
P. O. Box 271
EASTLAND, TEXAS

February 2, 1989

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RE: CASE NO.
11-87-112-CV

TRIAL COURT CASE
NO. 81-14621-I

STYLE: Cedar Crest #10, Inc.
V: City of Dallas

The Court has this day GRANTED Appellant's motion to stay mandate in the above cause pending action in the U.S. Supreme Court.

The Court has this same day OVERRULED Appellee's motion to determine insufficiency of supercedeas bond in the above cause.

Respectfully yours,

Oleta Moseley, Clerk

By /s/
Diana Reynolds,
Deputy

SUPREME COURT OF TEXAS
P.O. Box 12248
Supreme Court Building
Austin, Texas 78711
Mary M. Wakefield, Clerk

January 4, 1989

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RE: Case No. C-7771

STYLE: CEDAR CREST NO. 10, INC.
V: THE CITY OF DALLAS

Dear Counsel:

Today, the Supreme Court of Texas overruled petitioner's motion for rehearing of the application for writ of error in the above styled cause.

Respectfully yours,

Mary M. Wakefield,
Clerk

By /s/
Blanca E. Morin,
Deputy

SUPREME COURT OF TEXAS
P.O. Box 12248
Supreme Court Building
Austin, Texas 78711
Mary M. Wakefield, Clerk

November 16, 1988

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Dallas, TX 75201

RE: Case No. C-7771

STYLE: CEDAR CREST NO. 10, INC.
V:. THE CITY OF DALLAS

Dear Counsel:

Today, the Supreme Court of Texas denied the above referenced application for writ of error with the notation, Writ Denied.

Respectfully yours,

Mary M. Wakefield,
Clerk

By /s/
Blanca E. Morin,
Deputy

APPENDIX B

Opinions of Courts Below

Opinion - June 16, 1988
11th Court of Appeals
Eastland, Texas.

11th Court of Appeals

Eastland, Texas

Opinion

Cedar Crest #10, Inc.

Appellant

Vs. No. 11-87-112-CV -- Appeal from Dallas County

City of Dallas

Appellee

Claiming an apartment building is a public nuisance, the City of Dallas seeks demolition of the building pursuant to DALLAS, TEX., REV. CITY CODE ch. 27 (1960). The owner, Cedar Crest #10, Inc., appeals the trial court's finding that the building is a nuisance and its order for demolition, asserting (1) that Chapter 27 is unconstitutional, (2) there was no trial on the merits, and (3) that the City's action is barred by estoppel. We disagree. Because Chapter 27 provides for a

judicial determination of the fact of nuisance, the judgment reflects a hearing on the merits was held, and estoppel does not apply, we affirm the judgment of the trial court.

There is no statement of facts in this case. From the record, we have ascertained the following information. Appellant is the owner of a vacant 26-unit apartment building located at 1168 Diceman Avenue, Dallas, Texas. At some time in the past, an arson attempt was made on the vacant building. The building is now secured and boarded up to prevent access by the public. On or about May 5, 1981, the City of Dallas, acting through its administrative agency, the Urban Rehabilitation Standards Board, notified the owner of a hearing to determine if the building was a public nuisance. The Board found the building to be a public nuisance and ordered its abatement.

Appellant appealed the Board's decision to the district court pursuant to the City Code sec. 27-9(e) which provides:

> Once the decision of a hearing panel has become final under this section, Section 27.14, or 27-14.3, the person affected by an order may appeal the decision to the state district court. Appeal to the district court must be filed within 20 days from the date of receipt of notice of an order of demolition given by the administrator under Section 27-13(f). Appeal in the district court shall be limited to a hearing under the substantial evidence rule. (Ord. Nos. 15198; 15919) (Emphasis added)

In its Points of Error Nos. 1 and 4, Appellant complains that this section of the ordinance is unconstitutional because it deprives him of his right to due process of law.

Addressing this question in Traylor v. City of Amarillo, Texas, 492 F.2d 1156 (5th Cir. 1974), the Fifth Circuit found that a similar ordinance did not violate the due process clause. In Traylor, the Court stated:

> Where control is reasonable and the actions otherwise accord procedural fairness, we do not believe that the United States Constitution requires that a judicial determination precede demolition of property found to be a nuisance.

In that case, the City demolished Traylor's property without compensation. Traylor argued that demolition, prior to judicial determination that the property is indeed a nuisance, violated his constitutional guarantee of due process. The Court noted and agreed with the district court's conclusion that the challenged ordinances were a legitimate and compelling exercise of the city's police power and also found that adequate procedural safeguards in the notices, hearings, and opportunities for compliance were provided by the ordinances.

In the case before us, the ordinance does not violate the due process clause of the United States Constitution. Appellant's

pleadings indicate that it received a notice of violation from the Board, a notice of hearing date on the alleged violation (at which hearing it appeared), and notice of the agency's order of demolition. Appellant appealed this finding to the district court which reviewed the Board's findings. The ordinance provides for notices, hearings, and opportunity for compliance. The ordinance provides that the findings are appealable to the district court thereby providing for the availability of a judicial determination. Cedar Crest #10, Inc. has availed itself of these procedural safeguards and has been afforded due process.

For the same reasons, the ordinance does not violate TEX. CONST. art. I, sec. 19 which recites: "No citizen of this State shall be deprived of . . . property . . . except by the due course of law of the land."

Further, appellant argues that the ordinance is invalid because it mandates the use of the substantial evidence rule as a standard for review thereby preventing a judicial determination of the alleged nuisance and cites as authority for this proposition City of Houston v. Lurie, 224 S.W.2d 871 (Tex. 1949). In Lurie, the ordinance provided that if the owner failed to comply with the order of the city council, the city attorney shall "file suit in the proper court against such owner and obtain the necessary orders and process of said court to enforce the orders of the city council." The City sued Lurie to enforce the orders of its council. Based upon a preponderance of the evidence standard, the jury found that the two buildings in question were nuisances, one of which could be repaired to bring it into compliance with the city code. On motion, the trial court disregarded

the finding that one building was repairable and entered its judgment finding both buildings to be nuisances and ordered their demolition. The Texas Supreme Court reversed the judgment of the trial court holding that the special issues submitted were not supported by the allegations in the City's petition and remanded the cause. In its petition for writ of error to the Supreme Court, the City urged the court to reinstate the trial court's judgment urging that the court should have rendered judgment for the City without submitting the case to the jury or, alternatively, instructed a verdict for the City because substantial evidence was offered and admitted at trial in the district court which reasonably supported the findings of the city council declaring the buildings to be serious fire hazards not subject to repair.

In answer to the City's plea for application of the substantial evidence rule, the Court stated:

> Certainly we would not be justified in applying the substantial evidence rule to this case when there is nothing in the statutes, including the home rule enabling act, or in the city's charter or in the city's ordinance, expressing an intention that the suit be tried under that rule.

However, contrary to the ordinance in Lurie, Section 27-9(e) clearly provides that the standard of review shall be the substantial evidence rule. In its discussion of judicial determination of public nuisance, the Court, in Lurie, relied upon its decisions of Crossman v. City of Galveston, 247 S.W. 810 (Tex.1923), and City of Texarkana v. Reagan, 247 S.W. 816 (Tex.1923). However, these cases examined ordinances providing for abatement of public nuisances with no provision for judicial review. Unlike Lurie, Crossman, and Reagan, the ordinance before us provides for a

judicial determination and prescribes the standard to be used.

Appellant's first and fourth points are overruled.

In appellant's Points of Error Nos. 2 and 3, it complains that there was no evidence to support the findings of the Board and that there was no trial on the merits on the appeal before the trial court.

There is no statement of facts in this case. Appellant would use this lack of a record as proof of no evidence and no trial on the merits. We disagree.

In Byrd v. Texas Department of Human Resources, 673 S.W.2d 640 (Tex.App.--San Antonio 1984, no writ), the court stated:

> When the court in its judgment finds generally for one of the parties, but no specific findings of fact and conclusions of law are requested and none are filed, and no statement of facts is brought forward on appeal, there exists little basis for review, save in a situation where there is

> fundamental error, or where the court exceeeds its jurisdiction in rendering the decree at all. In such a situtation, the appellate court presumes that the judgment was supported by evidence offered upon the issues raised by the pleadings or tried by express or implied consent. 4 R. McDONALD, TEXAS CIVIL PRACTICE IN DISTRICT AND COUNTY COURTS sec. 16.10(a) (rev. 1971); see Guthrie v. National Homes Corp., 394 S.W.2d 494, 495 (Tex.1965); Lane v. Fair Stores, Inc., 150 Tex. 566, 571, 243 S.W.2d 683, 685 (1951); Commercial Credit Corp. v. Smith, 143 Tex. 612, 616, 187 S.W.2d 363, 365 (1945); Woodward v. Higdon, 643 S.W.2d 470, 471 (Tex.Civ.App.--Waco 1982, writ ref'd n.r.e.).

The judgment recites that the trial court heard the arguments of counsel, considered briefs, and, applying the substantial evidence rule, affirmed the decision of the Board. Because of the foregoing presumptions and recitation in the judgment, we overrule appellant's second and third points of error.

In its last point of error, appellant urges that the City of Dallas is judicially estopped and bound by the opinion in Joe Bailey d/b/a General Rental Company et al v.

City of Dallas, No. 05-83-209-CV (Tex.App. - Dallas, March 22, 1984) (unpublished), which holds that the apartment building at 1168 Diceman Avenue is not a nuisance.

Joe Bailey is the majority owner of the appellant corporation in this case. In Bailey, the City alleged this same building to be a nuisance pursuant to DALLAS, TEX., REV. CITY CODE ch. 16 (1960), the Dallas City Fire Code. In the case on appeal, the City filed a motion to stay the trial court pending a final decision in Bailey. In its motion, the City alleged that the question of nuisance as to this property was being answered in Bailey and that the final determination would have a binding effect on the trial court.

Appellant urges that because the property was found not to be a nuisance in Bailey, the City is judicially estopped to claim the building is a nuisance in this case, since the

City has asserted in its pleadings that the trial court would be bound by the determination in Bailey. See Long v. Knox, 291 S.W.2d 292 (Tex.1956); State v. Knapp, 740 S.W.2d 809 (Tex.App. - El Paso 1987), cause dism'd on joint motion, 742 S.W.2d 279 (Tex.1987); LaChance v. McKown, 649 S.W.2d 658 (Tex.App. - Texarkana 1983, writ ref'd n.r.e.). We disagree.

Judicial estoppel does not apply. The city did not assert a position in Bailey contrary to the position it takes in the present case. Rather, the City continues to assert the same position that the building is a nuisance. The City filed a motion to stay for simple judicial economy. Had the building been found to be a nuisance and abated in Bailey, it would have been unnecessary to proceed in the present case. Therefore, the City's assertion that the building was a

nuisance under Chapter 16 (which was ruled invalid) does not judicially estop the City from asserting the building is a nuisance under Chapter 27. Appellant's last point of error is overruled.

The judgment of the trial court is affirmed.

/s/ W. G. Arnot
W. G. Arnot

JUSTICE

June 16, 1988

Publish. See TEX.R.APP.P. 90.

APPENDIX C

Copies of Statutes

Page

1. DALLAS, TEX. REV. CITY CODE (1960) Ch. 27, §§1 - 16 (as amended January, 1980). C-1

2. DALLAS, TEX. REV. CITY CODE (1960) Ch. 27, §§1 - 16 (as amended July, 1988). C-38

DALLAS CITY CODE

ARTICLE I. GENERAL PROVISIONS

SEC. 27-1. LEGISLATIVE FINDINGS OF FACT.

There exists in the City of Dallas, Texas, structures used for human habitation and nonresidential purposes that are substandard in structure and maintenance. Furthermore, inadequate provision for light and air, insufficient protection against fire, lack of proper heating, insanitary conditions, and overcrowding constitute a menace to the health, safety, morals, welfare, and reasonable comfort of our citizens. The existence of such conditions will create slum and blighted areas requiring large scale clearance, if not remedied. Furthermore, in the absence of corrective measures, such areas will experience a deterioration of social values, a curtailment of investment and tax revenue, and an impairment of economic values.

The establishment and maintenance of minimum structural and environmental standards are essential to the prevention of blight and decay and the safeguarding of public health, safety, morals and welfare. (Ord. 15198)

SEC. 27-2. PURPOSE OF CHAPTER.

(a) The purpose of this chapter is to protect the health, safety, morals, and welfare of our citizens by establishing minimum standards applicable to residential and non-residential structures. Minimum standards are established with respect to utilities, facilities, and other physical components essential to make structures safe, sanitary, and fit for human use and habitation. Demolition of structure is provided for as a last resort when compliance with standards cannot reasonably be achieved.

(b) This chapter is found to be remedial and essential to the public interest, and it is intended that this chapter be liberally construed to effect its purpose. All structures within the city on the effective date of this chapter, or constructed thereafter, must comply with the provisions of this chapter. (Ord.15198)

SEC. 27-3. DEFINITIONS.

(1) ADMINISTRATOR means the administrator of the urban rehabilitation division of the department of housing and urban rehabilitation, or his designated representative.

. . . .

(4) BOARD means the urban rehabilitation standards board.

. . . .

(6) DIRECTOR means the director of the department of housing and urban rehabilitation, or his designated representative.

. . . .

(12) OWNER means a person claiming, or in whom is vested, the ownership, dominion, or title of real property, including, but not limited to:

(A) the holder of fee simple title;

(B) the holder of a life estate;

(C) the holder of a leasehold estate for an initial term of five years or more;

(D) the buyer in a contract for deed; and

(E) a mortgagee, receiver, executor, or trustee in control of real property; but not including the holder of a leasehold estate or tenancy for an initial term of less than five years.

. . . .

(14) PREMISES means a lot, plot, or parcel of land, including any structures thereon.

. . . .

(18) STRUCTURE means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

(19) URBAN NUISANCE refers to a premises or structure that:

(A) is dangerous to the physical health or safety of an occupant or other person; or

(B) because of violations of Section 27-11, its state of disrepair is so unreasonable that it causes injury, damage, harm, or inconvenience to a considerable portion of the community in the use and enjoyment of property, materially interfering with the proper use or comfort and enjoyment of surrounding property, taking into consideration

the nature and use of the properties in the area and the character of the community in which they are situtated, which condition would be substantially offensive and annoying to persons of ordinary sensibilities, tastes and habits living in the community. (Ord. 15198; Ord. 15919; Ord. 16473)

ARTICLE II. ADMINISTRATION

SEC. 27-4. ESTABLISHMENT OF AN URBAN REHABILITATION DIVISION.

(a) There is established a division of the department of housing and urban rehabilitation to be known as the urban rehabilitation division. The administrator of the urban rehabilitation division is appointed by the director of housing and urban rehabilitation and is authorized and directed to administer and enforce, under the supervision of the director, the provisions of this chapter.

(b) The administrator may appoint officers, inspectors, assistants, and other employees, as authorized by the city council, to carry out the functions of the urban rehabilitation division. The administrator may assign his duties under this chapter to employees and other subordinates of the urban rehabilitation division. (Ord. 15198)

SEC. 27-5. INSPECTION.

For the purpose of ascertaining whether violations of this chapter exist, the administrator is authorized at a reasonable time to inspect:

(1) the exterior of a structure and premises which contain no structure; and

(2) the interior of a structure, if the permission of the owner, occupant, or person in control is given. (Ord. 15198)

SEC. 27-6. URBAN REHABILITATION STANDARDS

BOARD.

(a) There is created the urban rehabilitation standards board, which is composed of 19 members, including a chairman and 18 other members to be appointed by the city council, and consisting of:

(1) A registered architect who has had at least 10 years experience in the construction of buildings and housing;

(2) A physician who is licensed to practice medicine in the state and has actively been engaged in practice for at least 10 years;

(3) A mortgage loan banker who has been engaged in mortgage loan banking for at least 10 years;

(4) A home builder who has at least 10 years experience in the construction of homes;

(5) A licensed real estate broker who has at least 10 years experience in the appraisal of real estate;

(6) A person who is engaged in social or welfare work and having at least 10 years experience in public or private case work;

(7) An ordained minister who has at least 10 years experience in the clergy;

(8) A structural engineer who has at least 10 years experience in the constuction of commercial buildings;

(9) Eleven members chosen on the basis of their interest in community affairs.

(b) Members must be residents of the city. Their appointment is for a term of two years ending on September 1 of each odd-numbered year or until their successors are appointed and qualified.

(c) The director of environmental health and conservation, the fire marshall, the

superintendant of the litter control division of the department of streets and sanitation services, and the building official shall serve in an advisory capacity as ex officio members of the board with no voting privileges. (Ord. 15198)

SEC.27-7. HEARING PANELS.

(a) The chairman of the board shall divide the board into two hearing panels for the purpose of performing the duties of the board. Each panel is composed of nine members and the chairman; six members constitute a quorum. Decisions of a hearing panel are made by a majority vote of those present.

(b) The chairman, who shall attend the meetings of each panel, is responsible for obtaining a quorum for each meeting of a panel. In the absence of a regular member, the chairman may assign a member from another

panel to serve. Each board member, including the chairman, has full voting privileges on either panel and is free to attend any panel meeting.

(c) For the purpose of fulfilling attendance requirements, a member who is absent from his assigned panel meeting but attends the meeting of the other panel immediately preceding or immediately following the missed panel meeting, will not, upon approval of the chairman, be credited with an absence. A member, however, must attend one meeting of the other panel for each meeting of his assigned panel from which he is absent in order to avoid being credited with an absence.

(d) Each hearing panel shall select a vice-chairman to preside over its proceedings in the absence of the chairman.

(e) The administrator shall assign cases other than rehearings to the hearing panels on

a rotation basis. A rehearing shall be assigned to the same hearing panel that originally heard the case.

(f) Each hearing panel has the same authority as the full board.

(g) A decision by a hearing panel constitutes a decision of the board. (Ord. 15198; Ord.15919)

SEC. 27-8. POWERS AND DUTIES OF A HEARING PANEL; ADVISORY RESPONSIBILITIES OF THE BOARD.

(a) A hearing panel has the following powers and duties:

(1) to require the reduction in occupancy load of an overcrowded structure or vacation of a structure that is dangerous to the health, safety, or welfare of the occupants;

(2) to permit the repair of a structure found to be an urban nuisance as an alternative to demolition of the structure;

(3) to require the demolition of a structure found to be an urban nuisance;

. . . .

(5) to require that a vacant structure or a vacant portion of a structure constituting a dangerous condition or nuisance be securely closed and made safe;

(6) to require or cause the correction of a dangerous condition on the land. Correction of a dangerous condition may be accomplished by city forces or private contractor. Costs of correction are the responsibility of the owner;

(7) to grant a variance when, in the opinion of a hearing panel, a literal interpretation of this chapter would result in the imposition of an unnecessary or unreasonable hardship.

(b) In addition to the powers and duties of the hearing panels, the board shall per-

iodically meet as a whole for the purpose of planning and advising the city council on matters concerning substandard housing and enforcement of this chapter. (Ord. 15198; Ord. 16473)

SEC. 27-9. PROCEDURE.

(a) The board may adopt rules not inconsistent with this chapter or Chapter 8 of this code. Meetings of the board or a hearing panel will be held at the call of the chairman, or in his absence the vicechairman, or an acting chairman designated by the chairman, or as the board may determine. The chairman, acting chairman, or the vice-chairman may administer oaths and compel the attendance of witnesses.

(b) The administrator or his designated representative shall act as secretary to the board and the hearing panels.

(c) At each hearing of a hearing panel, an owner, lessor, occupant, or lienholder may present witnesses in his own behalf and is entitled to cross-examine any witness appearing against him.

(d) After a public hearing the decision of a hearing panel is final as to administrative remedies and a rehearing may not be granted except as provided by Sections 27-14 and 27-14.3.

(e) Once the decision of a hearing panel has become final under this section, Section 27-14, or 27-14.3, the person affected by an order may appeal the decision to the state district court. Appeal to the district court must be filed within 20 days from the date of receipt of notice of an order of demolition given by the administrator under Section 27-13(f). Appeal in the district court shall

be limited to a hearing under the substantial evidence rule. (Ord. 15198; Ord. 15919)

ARTICLE III. MINIMUM STANDARDS.

SEC. 27-10. VIOLATIONS; NOTICE; PENALTY

(a) When the administrator determines that there is a violation of this chapter or any rule or regulation adopted pursuant to this chapter, before issuing a citation to municipal court, he shall give notice of the violation to the person responsible. The notice must be in writing, specifying the alleged violation and providing a reasonable time for compliance.

(b) If the owner of the property resides outside Dallas County, the administrator may give notice to the property manager. Upon receipt of notice of violation, a property manager shall notify the owner of the specifics of the notice of violation within 10 days

and shall make every reasonable effort to have the owner correct the violation.

(c) After notice, a person who knowingly continues to violate a provision of this chapter, or fails to perform an act required of him by this chapter, commits an offense. A person commits a separate offense each day or portion of a day during which a violation occurs or continues.

(d) An offense under this chapter is punishable by a fine not to exceed $200.

(e) The administrator has the authority to enforce provisions of Chapter 7A and Article II, Chapter 18 of this Code. (Ord. 15198; Ord. 16473)

SEC. 27-11. MINIMUM STANDARDS; RESPONSIBILITIES OF OWNER.

(a) Property standards. An owner shall:

(1) eliminate a hole, excavation, sharp protrusion, and other object or condition that

exists on the land and is reasonably capable of causing injury to a person;

(2) securely cover or close a well, cesspool, or cistern;

(3) provide solid waste receptacles or containers when required by Chapter 18 of this code;

(4) provide drainage to prevent standing water and flooding on the land;

(5) remove dead trees and tree limbs that are reasonably capable of causing injury to a person; and

(6) keep the doors and windows of a vacant structure or vacant portion of a structure securely closed to prevent unauthorized entry.

(b) Structural standards. An owner shall:

(1) protect the exterior surfaces of a structure which are subject to decay by application of paint or other coating;

(2) fill hollow, masonry supporting piers, if used, with concrete and anchor the piers to concrete footings with a 5/8" steel dowel;

(3) provide and maintain railings for stairs, steps, balconies, porches, and elsewhere as specified in the Dallas Building Code;

(4) repair holes, cracks, and other defects reasonably capable of causing injury to a person in stairs, porches, steps and balconies;

(5) maintain a structure intended for human occupancy and a structure used as an accessory to a structure intended for human occupancy in a weather-tight and water-tight condition;

(6) maintain floors, walls, ceilings and all supporting structural members in a sound

condition, capable of bearing imposed loads safely;

(7) provide cross-ventilation of not less than 1 1/2 square feet for each 25 lineal feet of wall in each basement, cellar, and crawl space;

(8) repair or replace chimney flue and vent attachments that do not function properly;

(9) repair holes, cracks, breaks, and loose surface materials that are health or safety hazards in or on floors, walls, and ceilings; and

(10) provide and maintain a moisture-resistant finish or material for the flooring or subflooring of each bathroom, shower room, and toilet room.

(c) Utility standards. An owner shall:

(1) provide and maintain in operating condition connections to discharge sewage from

a structure or land into a public sewer system where available;

(2) provide and maintain in operating condition a toilet connected to a water source and to a public sewer, where available, in each structure intended for human habitation;

(3) provide and maintain in operating condition connections and pipes to supply potable water at adequate pressure to a structure intended for human habitation;

(4) provide and maintain in operating condition a device to supply hot water of a minimum temperature of 120°F. within each structure intended for human habitation;

(5) provide and connect a kitchen sink, bathtub or shower, and lavatory to a cold and hot water source in each structure intended for human habitation;

(6) connect plumbing fixtures and heating equipment that the owner supplies in

accordance with the Dallas Plumbing Code and the Dallas Mechanical Code;

(7) provide heating equipment capable of maintaining a minimum inside temperature of 68° F. or utility connection for such equipment in each room of a structure intended for human occupancy;

(8) provide and maintain in operating condition supply lines for electrical service to each structure intended for human occupancy if electrical service is available within 300 feet;

(9) connect each heating and cooking device that burns solid fuel to a chimney or flue; and

(10) provide and maintain in operating condition electrical circuits and outlets sufficient to safely carry a load imposed by normal use of appliances and fixtures.

(d) Health standards. An owner shall:

(1) eliminate rodents and vermin in or on the land;

(2) provide a structure intended for human habitation with a screen for keeping out insects at each opening of the structure if the structure is not cooled with refrigerated air;

(3) maintain the interior of a vacant structure or vacant portion of a structure free from rubbish and garbage;

(4) keep the interior of a structure free from insects, rodents, and vermin, except as specified in Section 27-12(b).

(e) It is a defense to prosecution under Subsection (a) of this section that the premises concerned is the site of new construction and reasonable and continuous progress is being made to complete the construction.

(f) It is a defense to prosecution under Subsection (d)(4) of this section that the structure was treated to eliminate insects, rodents, and vermin by a person licensed under the Texs Structural Pest Control Act once within the preceding six months. (Ord. 15198; Ord. 15372; Ord. 15919; Ord. 16473)

SEC. 27-12. RESPONSIBILITIES OF OCCUPANT.

(a) An occupant shall:

(1) maintain those portions of the interior of a structure under his control free from rubbish, garbage, and other conditions that would encourage infestation of insects, rodents, or vermin;

(2) remove an animal or animals from a structure if the presence of the animal or animals is a health hazard to an occupant;

(3) connect plumbing fixtures and heating equipment that the occupant supplies in

accordance with the Dallas Plumbing Code and the Dallas Mechanical Code;

(4) provide solid waste receptacles or containers when required by Chapter 18 of this code; and

(5) not alter a structure or its facilities so as to create a nonconformity with Section 27-11 of this section.

(b) The tenant occupant of a single-family residential structure shall keep the interior of the structure free from insects, rodents, and vermin if the owner can show that the structure was treated to eliminate insect, rodents, and vermin by a person licensed under the Texas Structural Pest Control Act:

(1) within two weeks before the date the tenant took occupancy; or

(2) once within the preceding six months if there has been more than one tenant during

the preceding six months. (Ord. 15198; Ord. 15372)

ARTICLE IV.

DEMOLITION, VACATION, AND CLOSURE

SEC. 27-13. URBAN NUISANCE; REPAIR AND DEMOLITION; NOTICE.

(a) The administrator shall give notice of a hearing to consider demolition of a structure to the owner or owners, lessor, and occupant of the structure, and any lienholder of record of the real property concerned. A structure may be considered for demolition if the structure is not maintained in compliance with one or more of the minimum standards of Section 27-11, and the structure is an urban nuisance.

(b) A public hearing to consider demolition of a structure shall be before a hearing panel of the board after notice has been given to the persons designated in Subsection (a).

If notice is by personal service or by certified mail that was sent more than 15 days before the scheduled hearing, and the record shows that the notice was received by a person designated in Subsection (a) less than five days before the hearing, the person shall upon request at the hearing, receive a resetting of the hearing. Written notice of the rescheduled hearing may be given to persons in attendance at that time. If notice is by publication, the final publication must be at least five days before the hearing. At the hearing the administrator shall present evidence of the condition of a structure and an owner, lessor, occupant and lienholder, as well as any interested person, may present evidence on relevant issues.

(c) A hearing panel, after evidence from each interested person present, may:

(1) find that the structure is not an urban nuisance and refer the matter to the administrator for further appropriate action; or

(2) grant a variance in order to avoid the imposition of an unreasonable hardship; or

(3) in the case of a single-family dwelling occupied by the owner where the health, safety, and welfare of other persons will not be affected, may grant an exception to any provision of this chapter to avoid the imposition of an unreasonable hardship; or

(4) find that the structure is an urban nuisance and order demolition of the structure or order repair or correction within a specified period of time and demolition of the structure if the repair or correction is not timely effected.

(d) Demolition of a structure may be accomplished by an owner as compliance with this section or by the city. The expense of demolition, when performed under contract with the city or by city forces, constitutes a lien against the real property on which a structure stood and the lien runs with the land. The city may use lawful means to collect demolition costs from an owner.

(e) The administrator shall give notice of demolition if he determines that the owner has not complied with an order to repair issued under Subsection (c)(4).

(f) The administrator shall give notice of an order issued under Subsection (c)(4) and notice of demolition under Subsection (e), at the time of issue, to each person designated in Subsection (a) and shall file each order under Subsection (c)(4) in the deed records of Dallas County. If an order to repair is timely

effected, the administrator shall, upon request and payment of the cost by the owner, file a notice of compliance in the deed records of Dallas County.

(g) When an order issued under Subsection (c)(4) has been filed in the deed records of Dallas County, execution of the order is not affected by a sale or other transfer of the premises. A person acquiring interest in property after an order has been so filed, is subject to the requirements of the order. The provisions of this subsection shall be included as a part of each order.

(h) Except for written notice of a rescheduled hearing served to a person attending the original setting of a hearing, the administrator shall serve notice required by this section by certified United States mail, return receipt requested, sent to the last known address of the person being notified. If

the certified mail is returned undelivered, the administrator may serve the notice personally if the person to be notified can be found within Dallas County. If notice sent to an owner is returned undelivered, and after a diligent search, the administrator is unable to discover a correct address for the owner or is unable to serve the owner personally, then the administrator shall give notice by publication of the order once in the official newspaper for the city at least five days before the hearing. (Ord. 15198; Ord. 15372; Ord. 15919; Ord. 16473)

SEC. 27-14. REHEARING OF DEMOLITION ORDERS.

(a) A hearing panel may grant one rehearing if a person affected by an order and notice of demolition requests the rehearing within 10 days after notice of demolition is

received. The rehearing shall not be given prior to issuance of a notice of demolition.

(b) When a rehearing is granted, the administrator shall stay all proceedings of demolition until conclusion of the rehearing.

(c) A rehearing fee of $40 shall accompany a request for a rehearing. A person may make written affirmation of his inability to pay a fee and the hearing panel may waive the fee.

(d) a decision of the hearing panel on the rehearing is final as to administrative remedies, unless the person affected obtains a hearing under Subsection 27-14.3. (Ord. 15198; Ord. 15919)

. . . .

SEC. 27-14.2. REHEARING REVIEW COMMITTEE.

(a) The chairman shall appoint six members of the board to serve on a rehearing review committee. The chairman shall rotate

appointments so that all members have an opportunity to serve on the committee during the ordinary tenure of office. The committee shall make recommendations to a hearing panel only upon the concurring vote of at least four members of the committee.

(b) The rehearing review committee shall meet when called by the chairman or vice chairman and only when there are matters awaiting the committee's consideration, but not more often than once each month. (Ord. 15919)

SEC. 27-14.3. REHEARING REVIEW.

(a) If after the first rehearing, a person is unable to complete repairs within the time specified by the hearing panel, he may request a hearing before the rehearing review committee by notifying the administrator within

10 days after receiving the second notice of demolition.

(b) Upon receiving a request for a rehearing review, the administrator shall study the facts of the case and shall submit a case to the rehearing review committee only when he can demonstrate that:

(1) the person requesting the review has made substantial progress in eliminating violations or has been prevented from doing so by circumstances beyond his control; or

(2) repairs made to the structure render it no longer an urban nuisance; or

(3) because of a change in circumstances, demolition of the structure is no longer appropriate and the admistrator recommends the granting of a variance or exception as described in Section 27-13(c)(2) or (3).

(c) After hearing a case submitted by the administrator, the rehearing review committee may grant the person affected by an order and notice of demolition a second rehearing before the hearing panel, if the committee determines by a concurring vote of at least four members that one or more of the conditions in Subsection (b) exist, and a rehearing is warranted.

(d) A second rehearing, when granted must be before the same hearing panel that originally heard the case, and the administrator shall schedule the rehearing for the next regular meeting of that hearing panel.

(e) the administrator shall give written notice of the rehearing to the person affected by the order and notice of demolition, before he leaves the committee hearing. This personally served notice is the only notice necessary for a second rehearing.

(f) When a second rehearing is granted, the administrator shall stay all proceedings of demolition until conclusion of the rehearing.

(g) The person affected by the order and notice of demolition who has requested a second rehearing, shall pay a fee of $40 to the administrator prior to the date of the rehearing before the hearing panel. A person may make affirmation of inability to pay a fee and the hearing panel may waive the fee.

(h) The decision of the rehearing review committee to deny a person a second rehearing or the decision of the hearing panel upon holding a second rehearing is final as to administrative remedies. (Ord. 15919)

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DALLAS CITY CODE

CHAPTER 27

MINIMUM URBAN REHABILITATION STANDARDS

ARTICLE I. GENERAL PROVISIONS

SEC. 27-1. LEGISLATIVE FINDINGS OF FACT.

There exists in the City of Dallas, Texas, structures used for human habitation and nonresidential purposes that are substandard in structure and maintenance. Furthermore, inadequate provision for light and air, insufficient protection against fire, lack of proper heating, insanitary conditions, and overcrowding constitute a menace to the health, safety, morals, welfare, and reasonable comfort of the citizens of the city of Dallas. The existence of such conditions will create slum and blighted areas requiring large scale clearance, if not remedied. Furthermore,

in the absence of corrective measures, such areas will experience a deterioration of social values, a curtailment of investment and tax revenue, and an impairment of economic values. The establishment and maintenance of minimum structural and environmental standards are essential to the prevention of blight and decay and the safeguarding of public health, safety, morals and welfare. (Ord. Nos. 15198; 19234)

SEC. 27-2. PURPOSE OF CHAPTER.

(a) The purpose of this chapter is to protect the health, safety, morals, and welfare of the citizens of the city of Dallas by establishing minimum standards applicable to residential and nonresidential structures. Minimum standards are established with respect to utilities, facilities, and other physical components essential to make structures safe,

sanitary, and fit for human use and habitation. Demolition of structure is provided for as a last resort when compliance with standards cannot reasonably be achieved.

(b) This chapter is found to be remedial and essential to the public interest, and it is intended that this chapter be liberally construed to effect its purpose. All structures within the city on the effective date of this chapter, or constructed thereafter, must comply with the provisions of this chapter. (Ord. Nos. 15198; 19234)

SEC. 27-3. DEFINITIONS.

(4) BOARD means the urban rehabilitation standards board.

(5) DEPARTMENT means the department designated by the city manager to enforce and administer this chapter.

(6) DIRECTOR means the director of the department designated by the city manager to enforce and aminister this chapter and includes his representatives, agents, or department employees designated by the director.

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(13) OPERATING CONDITION means free of leaks, safe, sanitary, and in good working order.

(14) OWNER means a person claiming, or in whom is vested, the ownership, dominion, or title of real property, including, but not limited to:

(A) the holder of fee simple title;

(B) the holder of a life estate;

(C) the holder of a leasehold estate for an initial term of five years or more;

(D) the buyer in a contract for deed; and

(E) a mortgagee, receiver, executor, or trustee in control of real property;
but not including the holder of a leasehold estate or tenancy for an initial term of less than five years.

(15) PERSON means any individual, corporation, organization, partnership, association, or any other legal entity.

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(17) PREMISES or PROPERTY means a lot, plot, or parcel of land, including any structures on the land.

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(21) SANITARY means any condition of good order and cleanliness that precludes the probability of disease transmission.

(22) STRUCTURE means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built

up or composed of parts joined together in some definite manner.

(23) URBAN NUISANCE refers to a premises or structure that:

(A) is reasonably dangerous to the physical health or safety of an occupant or other person; or

(B) because of violations of Section 27-11, its state of disrepair is such that it could reasonably cause injury, damage, harm, or inconvenience to a considerable portion of the community in the use and enjoyment of property, materially interfering with the proper use or comfort and enjoyment of surrounding property, taking into consideration the nature and use of the properties in the area and the character of the community in which they are situtated, which condition would be substantially offensive and annoying to persons of ordinary sensibilities, tastes and

habits living in the community. (Ord. Nos. 15198; 15919; 16473; 17226; 19234; 19896)

ARTICLE II. ADMINISTRATION

SEC. 27-4. VIOLATIONS; PENALTY.

(a) A person who violates a provision of this chapter, or who fails to perform an act required of him by this chapter, commits an offense. A person commits a separate offense each day or portion of a day during which a violation is committed, permitted, or continued.

(b) An offense under this chapter is punishable by a fine not to exceed $2,000; except, that an offense under Section 27-5.2 and 27-25 of this chapter is punishable by a fine not to exceed $500.

(c) Except where otherwise specified, a culpable mental state is not required for the commission of an offense under this chapter.

(d) In addition to imposing the criminal penalty prescribed in Subsection (b), the city may, in accordance with Chapter 54, Subchapter B of the Texas Local Government Code, bring a civil action against a person violating a provision of this chapter. The civil action may include, but is not limited to, a suit to recover a civil penalty not to exceed $1,000 for each day or portion of a day during which the violation is committed, continued, or permitted.

(e) The penalties provided for in Subsection (b) and (d) are in addition to any other enforcement remedies the city may have under city ordinances and state law.

(f) The director has the authority to enforce provisions of Chapter 7A and Article II, Chapter 18 of this code. (Ord. Nos. 19234; 19896; 20017)

SEC. 27-5. INSPECTION.

For the purpose of ascertaining whether violations of this chapter exist, the director is authorized at a reasonable time to inspect:

(1) the exterior of a structure and premises which contain no structure; and

(2) the interior of a structure, if the permission of the owner, occupant, or person in control is given. (Ord. Nos. 15198; 19234)

SEC. 27-5.1. DONATION OF NON-COMPLYING PROPERTY TO A NONPROFIT CORPORATION

(a) A judge of the municipal court may dismiss one or more citations of a property owner which is charged with violating this chapter, if the property owner:

(1) brings the property, for which the citations have been issued, into compliance with this chapter within a specific time period ordered by the municipal judge; or

(2) donates the property, for which the citations have been issued, to a nonprofit corporation selected by the city.

(b) The urban rehabilitation standards board may waive a civil penalty or any part of a civil penalty assessed against a property owner pursuant to Section 27-13 of this chapter if the property owner donates the property, for which the civil penalty has been assessed, to a nonprofit corporation selected by the city.

(c) The city is authorized to contract with a nonprofit corporation for the acceptance of property donated pursuant to Subsection (a)(2) or (b) of this section. The terms of the contract must provide that the nonprofit corporation will:

(1) within 90 days from the date of acceptance of the donated property, bring the property into compliance with this chapter,

including, but not limited to, providing all necessary cleanup, maintenance, repairs, and alterations; and

(2) within 120 days from the date of acceptance of the donated property, sell the property directly to an occupant owner or rent the property directly to an occupant tenant. (Ord. Nos. 19234; 19896)

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SEC. 27-6. URBAN REHABILITATION STANDARDS BOARD.

(a) There is created the urban rehabilitation standards board, which is composed of 21 members, including a chairman and 20 other members to be appointed by the city council, and consisting of:

(1) a registered architect who has had at least 10 years experience in the construction of buildings and housing;

(2) a physician who is licensed to practice medicine in the state and has actively

been engaged in practice for at least 10 years;

(3) a mortgage loan banker who has been engaged in mortgage loan banking for at least 10 years;

(4) a home builder who has at least 10 years experience in the construction of homes;

(5) a licensed real estate broker who has at least 10 years experience in the appraisal of real estate;

(6) a person who is engaged in social or welfare work and having at least 10 years experience in public or private case work;

(7) an ordained minister who has at least 10 years experience in the clergy;

(8) a structural engineer who has at least 10 years experience in the construction of commercial buildings;

(9) thirteen members chosen on the basis of their interest in community affairs.

(b) Members must be residents of the city. Their appointment is for a term of two years ending on September 1 of each odd-numbered year or until their successors are appointed and qualified.

(c) The director of health and human services, the fire marshall, and the building official shall serve in an advisory capacity as ex officio members of the board with no voting privileges. (Ord. Nos. 15198; 19234; 19673)

SEC.27-7. HEARING PANELS.

(a) The chairman of the board shall divide the board into two hearing panels for the purpose of performing the duties of the board. Each panel is composed of nine members and the chairman; six members constitute a quorum. Decisions of a hearing panel are made by a majority vote of those present.

(b) The chairman, who shall attend the meetings of each panel, is responsible for obtaining a quorum for each meeting of a panel. In the absence of a regular member, the chairman may assign a member from another panel to serve. Each board member, including the chairman, has full voting privileges on either panel and is free to attend any panel meeting.

(c) For the purpose of fulfilling attendance requirements, a member who is absent from his assigned panel meeting but attends the meeting of the other panel immediately preceding or immediately following the missed panel meeting, will not, upon approval of the chairman, be credited with an absence. A member, however, must attend one meeting of the other panel for each meeting of his assigned panel from which he is absent in order to avoid being credited with an absence.

(d) Each hearing panel shall select a vice-chairman to preside over its proceedings in the absence of the chairman.

(e) The director shall assign cases other than rehearings to the hearing panels on a rotation basis. A rehearing shall be assigned to the same hearing panel that originally heard the case.

(f) Each hearing panel has the same authority as the full board.

(g) A decision by a hearing panel constitutes a decision of the board. (Ord. Nos. 15198; 15919; 19234)

SEC. 27-8. POWERS AND DUTIES OF A HEARING PANEL; ADVISORY RESPONSIBILITIES OF THE BOARD.

(a) A hearing panel has the following powers and duties:

(1) To require the reduction in occupancy load of an overcrowded structure or vacation

of a structure that is reasonably dangerous to the health, safety, or welfare of the occupants.

(2) To require, as an alternative to demolition of a structure found to be an urban nuisance, the repair of the structure by the owner or by the city.

(3) To require the demolition of a structure found to be an urban nuisance;

. . . .

(5) To require that a vacant structure or a vacant portion of a structure constituting a dangerous condition or nuisance be securely closed and made safe.

(6) To require or cause the correction of a dangerous condition on the land. Correction of a dangerous condition may be accomplished by city forces or private contractor. Costs of correction are the responsibility of the owner.

(7) To grant a variance when, in the opinion of a hearing panel, a literal interpretation of this chapter would result in the imposition of an unnecessary or unreasonable hardship.

(8) To assess a civil penalty, not to exceed $2,000 a day, against a property owner for each day or part of a day that he fails to repair or demolish a structure in compliance with a board order issued under Section 27-13 of this chapter.

(b) In addition to the powers and duties of the hearing panels, the board shall periodically meet as a whole for the purpose of planning and advising the city council on matters concerning substandard housing and enforcement of this chaper. (Ord. Nos. 15198; 16473; 19234; 19896)

SEC. 27-9. PROCEDURE.

(a) The board may adopt rules not inconsistent with this chapter or Chapter 8 of this code. Meetings of the board or a hearing panel will be held at the call of the chairman, or in his absence the vice-chairman, or an acting chairman designated by the chairman, or as the board may determine. The chairman, acting chairman, or the vice-chairman may administer oaths and compel the attendance of witnesses.

(b) The director or his designated representative shall act as secretary to the board and the hearing panels.

(c) At each hearing of a hearing panel, an owner, lessor, occupant, or lienholder may present witnesses in his own behalf and is entitled to cross-examine any witness appearing against him.

(d) After a public hearing the decision of a hearing panel is final as to administrative remedies and a rehearing may not be

granted except as provided by Sections 27-14 and 27-14.3.

(e) Once the decision of a hearing panel has become final under this section, Section 27-14, or 27-14.3, the person affected by an order may appeal the decision to the state district court. Appeal to the district court must be filed within 20 days from the date of receipt of notice of a final board order. Appeal in the district court shall be limited to a hearing under the substantial evidence rule. (Ord. Nos. 15198; 15919; 19234)

SEC. 27-10. FAILURE TO COMPLY WITH BOARD ORDER.

(a) A person commits an offense if he fails to correct a violation of this chapter in compliance with a board order that has become final under Section 27-9, 27-14, or 27-14.3.

(b) It is a defense to prosecution under Subsection (a) that the board order has been appealed to the state district court. (Ord. Nos. 15198; 16473; 18001; 19234)

ARTICLE III. MINIMUM STANDARDS

SEC. 27-11. MINIMUM STANDARDS; RESPONSIBILITIES OF OWNER.

(a) Property standards. An owner shall:

(1) eliminate a hole, excavation, sharp protrusion, and other object or condition that exists on the land and is reasonably capable of causing injury to a person;

(2) securely cover or close a well, cesspool, or cistern;

(3) provide solid waste receptacles or containers when required by Chapter 18 of this code;

(4) provide drainage to prevent standing water and flooding on the land;

(5) remove dead trees and tree limbs that are reasonably capable of causing injury to a person; and

(6) keep the doors and windows of a vacant structure or vacant portion of a structure securely closed to prevent unauthorized entry.

(b) Structural standards. An owner shall:

(1) protect the exterior surfaces of a structure which are subject to decay by application of paint or other coating;

(2) fill hollow, masonry supporting piers, if used, with concrete and anchor the piers to concrete footings with a 5/8" steel dowel;

(3) provide and maintain railings for stairs, steps, balconies, porches, and elsewhere as specified in the Dallas Building Code;

(4) repair holes, cracks, and other defects reasonably capable of causing injury to a person in stairs, porches, steps and balconies;

(5) maintain a structure intended for human occupancy and a structure used as an accessory to a structure intended for human occupancy in a weather-tight and water-tight condition;

(6) maintain floors, walls, ceilings and all supporting structural members in a sound condition, capable of bearing imposed loads safely;

(7) provide cross-ventilation of not less than 1 1/2 square feet for each 25 lineal feet of wall in each basement, cellar, and crawl space;

(8) repair or replace chimney flue and vent attachments that do not function properly;

(9) repair holes, cracks, breaks, and loose surface materials that are health or safety hazards in or on floors, walls, and ceilings; and

(10) provide and maintain a moisture-resistant finish or material for the flooring or subflooring of each bathroom, shower room, and toilet room.

(c) Utility standards. An owner shall:

(1) provide and maintain in operating condition connections to discharge sewage from a structure or land into a public sewer system where available;

(2) provide and maintain in operating condition a toilet connected to a water source and to a public sewer, where available, in each structure intended for human habitation;

(3) provide and maintain in operating condition connections and pipes to supply

potable water at adequate pressure to a structure intended for human habitation;

(4) provide and maintain in operating condition a device to supply hot water of a minimum temperature of 120°F. within each structure intended for human habitation;

(5) provide and connect a kitchen sink, bathtub or shower, and lavatory to a cold and hot water source in each structure intended for human habitation;

(6) connect plumbing fixtures and heating equipment that the owner supplies in accordance with the Dallas Plumbing Code and the Dallas Mechanical Code;

(7) provide and maintain in operating condition heating equipment capable of maintaining a minimum inside temperature of 68° F. or utility connection for such equipment in each room of a structure intended for human occupancy;

(8) if screens are not provided as required in Subsection (d)(2), provide and maintain in operating condition refrigerated air equipment capable of maintaining a maximum inside air temperature of 95° F. in each room of a structure intended for human occupancy;

(9) provide and maintain in operating condition supply lines for electrical service to each structure intended for human occupancy if electrical service is available within 300 feet;

(10) connect each heating and cooking device that burns solid fuel to a chimney or flue; and

(11) provide and maintain in operating condition electrical circuits and outlets sufficient to safely carry a load imposed by normal use of appliances and fixtures.

(d) Health standards. An owner shall:

(1) eliminate rodents and vermin in or on the land;

(2) provide a structure intended for human habitation with a screen for keeping out insects at each opening of the structure if the structure is not cooled with refrigerated air;

(3) maintain the interior of a vacant structure or vacant portion of a structure free from rubbish and garbage;

(4) keep the interior of a structure free from insects, rodents, and vermin, except as specified in Section 27-12(b).

(e) It is a defense to prosecution under Subsection (a) of this section that the premises concerned is the site of new construction and reasonable and continuous progress is being made to complete the construction.

(f) It is a defense to prosecution under Subsection (d)(4) of this section that the structure was treated to eliminate insects, rodents, and vermin by a person licensed under the Texs Structural Pest Control Act once within the preceding six months. (Ord. Nos. 15198; 15372; 15919; 16473; 19234)

SEC. 27-12. RESPONSIBILITIES OF OCCUPANT.

(a) An occupant shall:

(1) maintain those portions of the interior of a structure under his control free from rubbish, garbage, and other conditions that would encourage infestation of insects, rodents, or vermin;

(2) remove an animal or animals from a structure if the presence of the animal or animals is a health hazard to an occupant;

(3) connect plumbing fixtures and heating equipment that the occupant supplies in

accordance with the Dallas Plumbing Code and the Dallas Mechanical Code;

(4) provide solid waste receptacles or containers when required by Chapter 18 of this code; and

(5) not alter a structure or its facilities so as to create a nonconformity with Section 27-11 of this section.

(b) The tenant occupant of a single-family residential structure shall keep the interior of the structure free from insects, rodents, and vermin if the owner can show that the structure was treated to eliminate insect, rodents, and vermin by a person licensed under the Texas Structural Pest Control Act:

(1) within two weeks before the date the tenant took occupancy; or

(2) once within the preceding six months if there has been more than one tenant during

the preceding six months. (Ord. Nos. 15198; 15372; 19234)

ARTICLE IV.

REPAIR, DEMOLITION, VACATION, CLOSURE, AND CIVIL PENALTIES

SEC. 27-13. URBAN NUISANCE; REPAIR, DEMOLITION, AND CIVIL PENALTIES; NOTICE.

(a) The director shall give notice of a hearing to consider repair or demolition of a structure, or the assessment of a civil penalty against the owner, to the owner or owners, lessor, and occupant of the structure, and any lienholder of record of the real property concerned. A structure may be considered for repair, demolition, or a civil penalty if the structure is not maintained in compliance with one or more of the minimum standards of Section 27-11, and the structure is an urban nuisance.

(b) A public hearing to consider repair or demolition of a structure, or the assessment of a civil penalty against the owner, shall be before a hearing panel of the board after notice has been given to the persons designated in Subsection (a). If notice is by personal service or by certified mail that was sent more than 15 days before the scheduled hearing, and the record shows that the notice was received by a person designated in Subsection (a) less than five days before the hearing, the person shall upon request at the hearing, receive a resetting of the hearing. Written notice of the rescheduled hearing may be given to persons in attendance at that time. If notice is by publication, the final publication must be at least five days before the hearing. At the hearing the director shall present evidence of the condition of a structure and an owner, lessor, occupant and

lienholder, as well as any interested person, may present evidence on relevant issues.

(c) A hearing panel, after evidence from each interested person present, may:

(1) find that the structure is not an urban nuisance and refer the matter to the director for further appropriate action;

(2) grant a variance in order to avoid the imposition of an ureasonable hardship;

(3) in the case of a single-family dwelling occupied by the owner where the health, safety, and welfare of other persons will not be affected, may grant an exception to any provision of this chapter to avoid the imposition of an unreasonable hardship; or

(4) find that the structure is an urban nuisance and order:

(A) demolition of the structure;

(B) repair or correction of the structure within a specified period of time;

(C) repair or correction of the structure by the owner within a specified period of time and demolition of the structure if the repair or correction is not timely effected;

(D) repair or correction of the structure by the owner within a specified period of time and repair by the city if not timely effected by the owner; or

(E) repair, correction, or demolition of the structure within a specified period of time and the assessment of a civil penalty against the owner for each day or part of a day that he fails to repair, correct, or demolish the structure.

(d) Demolition of a structure may be accomplished by an owner as compliance with this section or by the city. The repair of a structure may be accomplished by an owner in compliance with this section, or by the city but only to the extent necessary to bring the

structure into compliance with minimum standards and only if the structure is a residential structure with not more than 10 dwelling units.

(e) The expense of repair or demolition, when performed under contract with the city or by city forces, and any civil penalty assessed against the owner constitutes a nontransferable lien against the real property on which the structure stands or stood, and the lien runs with the land. The city's lien is inferior to any previously recorded bona fide mortgage lien attached to the real property if the mortgage lien was filed for record in the county clerk's office of the county in which the real property is located before the date the civil penalty is assessed or the repair or demolition is begun by the city. The city's lien is superior to all other previously recorded judgment liens. A lien acquired by

the city under this subsection for repair expenses may not be foreclosed if the structure upon which the repairs were made is the residential homestead of a person 65 years of age or older and is occupied by that person.

(f) The city may use lawful means to collect repair and demolition costs and civil penalties from an owner. Any civil penalty or other assesment imposed under this section accrues interest at the rate of 10 percent a year from the date of assessment until paid in full. In any judicial proceeding regarding enforcement of city rights under this section, the prevailing party is entitled to recover reasonable attorney's fees from the nonprevailing party.

(g) The director shall give notice of demolition, repair by the city, or the assessment of a civil penalty, if he determines that the owner has not complied

with an order to repair issued under Subsection (c)(4)(C), (D), or (E).

(h) The director shall give notice of an order issued under Subsection (c)(4) and notice of demolition, repair by the city, or the assessment of a civil penalty under Subsection (g), at the time of issue, to each person designated in Subsection (a) and shall file each order under Subsection (c)(4) in the deed records of Dallas County. If an order to demolish or repair is timely effected, the director shall, upon request and payment of the cost by the owner, file a notice of compliance in the deed records of Dallas County.

(i) When an order issued under Subsection (c)(4) has been filed in the deed records of Dallas County, execution of the order is not affected by a sale or other transfer of the premises. A person acquiring interest in

property after an order has been so filed is subject to the requirements of the order. The provisions of this subsection shall be included as a part of each order.

(j) Except for written notice of a re-scheduled hearing served to a person attending the original setting of a hearing, the director shall serve notice required by this section by certified United States mail, return receipt requested, sent to the last known address of the person being notified. If the certified mail is returned undelivered, the director may serve the notice personally if the person to be notified can be found within Dallas County. If notice sent to an owner is returned undelivered, and after a diligent search, the director is unable to discover a correct address for the owner or is unable to serve the owner personally, then the director shall give notice by publication

of the order once in the official newspaper for the city at least five days before the hearing. (Ord. Nos. 15198; 15372; 15919; 16473; 19234; 19896)

SEC. 27-14. REHEARING OF REPAIR AND DEMOLITION ORDERS AND CIVIL PENALTY ASSESSMENTS.

(a) A hearing panel may grant one rehearing if a person affected by an order and notice of demolition, repair by city, or assessment of a civil penalty requests the rehearing within 10 days after notice of demolition is received. The rehearing shall not be given prior to issuance of a notice.

(b) When a rehearing is granted, the director shall stay all proceedings of demolition, repair by city, or assessment of a civil penalty until conclusion of the rehearing.

(c) A rehearing fee of $540 shall accompany a request for a rehearing. A person may make written affirmation of his inability to pay a fee and the hearing panel may waive the fee.

(d) A decision of the hearing panel on the rehearing is final as to administrative remedies, unless the person affected obtains a hearing under Subsection 27-14.3. (Ord. Nos. 15198; 15919; 18411; 18876; 19234; 19896)

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SEC. 27-14.2. REHEARING REVIEW COMMITTEE.

(a) The chairman shall appoint six members of the board to serve on a rehearing review committee. The chairman shall rotate appointments so that all members have an opportunity to serve on the committee during the ordinary tenure of office. The committee shall make recommendations to a hearing panel

only upon the concurring vote of at least four members of the committee.

(b) The rehearing review committee shall meet when called by the chairman or vice chairman and only when there are matters awaiting the committee's consideration, but not more often than once each month. (Ord. Nos. 15919; 19234)

SEC. 27-14.3. REHEARING REVIEW.

(a) If after the first rehearing, a person is unable to complete repairs within the time specified by the hearing panel, he may request a hearing before the rehearing review committee by notifying the director within 10 days after receiving the second notice of demolition, repair by the city, or assessment of a civil penalty.

(b) Upon receiving a request for a rehearing review, the director shall study the

facts of the case and shall submit a case to the rehearing review committee only when he can demonstrate that:

(1) the person requesting the review has made substantial progress in eliminating violations or has been prevented from doing so by circumstances beyond his control; or

(2) repairs made to the structure render it no longer an urban nuisance; or

(3) because of a change in circumstances, demolition of the structure is no longer appropriate and the director recommends the granting of a variance or exception as described in Section 27-13(c)(2) or (3).

(c) After hearing a case submitted by the director, the rehearing review committee may grant the person affected by an order and notice of demolition, repair by the city, or assessment of a civil penalty a second rehearing before the hearing panel, if the

committee determines by a concurring vote of at least four members that one or more of the conditions in Subsection (b) exist, and a rehearing is warranted.

(d) A second rehearing, when granted must be before the same hearing panel that originally heard the case, and the director shall schedule the rehearing for the next regular meeting of that hearing panel.

(e) The director shall give written notice of the rehearing to the person affected by the order and notice of demolition, before he leaves the committee hearing. This personally served notice is the only notice necessary for a second rehearing.

(f) When a second rehearing is granted, the director shall stay all proceedings of demolition, repair by the city, or assesment of a civil penalty until conclusion of the rehearing.

(g) The person affected by the order and notice of demolition who has requested a second rehearing, shall pay a fee of $540 to the director prior to the date of the rehearing before the hearing panel. A person may make affirmation of inability to pay a fee and the hearing panel may waive the fee.

(h) The decision of the rehearing review committee to deny a person a second rehearing or the decision of the hearing panel upon holding a second rehearing is final as to administrative remedies. (Ord. Nos. 15919; 19234; 19896)

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APPENDIX D

Notice of Appeal to

THE SUPREME COURT OF UNITED STATES

IN THE SUPREME COURT OF TEXAS

CEDAR CREST NO. 10, INC.
APPELLANT

vs. NO. C-7771

CITY OF DALLAS,
APPELLEE

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

TO THE HONORABLE SUPREME COURT:

Notice is hereby given that CEDAR CREST NO. 10, INC., Appellant/Petitioner, hereby appeals to the Supreme Court of the United States from the final order overruling Petitioner's Motion for Rehearing, entered herein on January 4, 1989.

This appeal is taken pursuant to 28 U.S.C. §1257.

NOTICE OF APPEAL TO U. S. SUPREME COURT
APPEALS:NOTICE

Respectfully submitted,

/s/
Michael E. Smoller

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ATTORNEY FOR APPELLANT
CEDAR CREST NO. 10, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing NOTICE has been served upon all parties required to be served by the Rules of the U. S. Supreme Court and the following Courts by hand delivery or via United States Mail, certified, return receipt requested, first class postage prepaid.

Supreme Court of Texas	Mary M. Wakefield, Clerk, P. O. Box 12248 Supreme Court Building Austin, Texas 78711
Court of Appeals 11th District of Texas	Oleta Mosely, Clerk 100 West Main St. P. O. Box 271 Eastland, Texas 76448
City of Dallas Appellee	Ms. Sally Jo Field Attorney of Record 7BN City Hall 1500 Marilla St. Dallas, Texas 75201

/s/
Michael E. Smoller

NOTICE OF APPEAL TO U. S. SUPREME COURT
APPEALS:NOTICE